Professional and Hospital DISCRIMINATION and the US Court of Appeals Fourth Circuit 1956-1967

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The landmark case, *Simkins v Moses H. Cone Memorial Hospital* (1963), challenged the use of public funds to expand segregated hospital care. The second case, *Cypress v Newport News Hospital Association* (1967), reaffirmed the federal government's application of Medicare certification guidelines to force hospitals to open up patient admissions, education programs, and staff privileges to all citizens and physicians.

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AS LATE AS THE MID-1960S, hospital discrimination was widespread throughout the United States and, in many jurisdictions, legally sanctioned. Discrimination was expressed through denial of staff privileges to minority physicians and dentists, refusal to admit minority applicants to nursing and residency training programs, and failure to provide medical, surgical, pediatric, and obstetric services to minority patients. A national campaign to eliminate hospital discrimination involved collaboration among professional associations; public health, hospital, and civil rights organizations; and the federal government, along with a direct attack against hospital policies through litigation that culminated in 2 landmark judicial decisions. These legal decisions, one involving a hospital in North Carolina and the other a hospital in Virginia, both emerged from the US Court of Appeals Fourth Circuit.

This article describes a series of court cases, all litigated by the National Association for the Advancement of Colored People (NAACP) Legal Defense and Education Fund between 1956 and 1967, that laid the foundation for elimination of overt discrimination in hospitals and professional associations. The first landmark case, *Simkins v Moses H. Cone Memorial Hospital* (1963), challenged the federal government's use of public funds to expand and maintain segregated hospital care. The second case, *Cypress v Newport News Hospital Association* (1967), reaffirmed the federal government's application of the Medicare certification guidelines to force hospitals to open up patient admissions, education programs, and staff privileges to all citizens and physicians regardless of race, color, or national origin. Successful pursuit of a legal strategy against racist hospital policies and practices was an essential element in a national campaign to eliminate discrimination in health care delivery in the United States.

FEDERAL POLICIES OF "SEPARATE BUT EQUAL" IN HOSPITAL CONSTRUCTION AND PATIENT CARE

At the close of World War II, the nation embarked on a large-scale initiative in hospital construction commonly referred to as the Hill–Burton program. The Hospital Survey and Construction Act, passed in 1946, authorized $75 million per year for 5 years for grants to states for hospital construction beginning in 1947, plus $3 million per year for state surveys of hospital facilities. As a federal–state partnership, state agencies were given an initial grant to assess how best to apportion construction funds on the basis of population distribution and existing hospital beds. Federal dollars without control over hospital administrative policies was the guiding principle.[1]

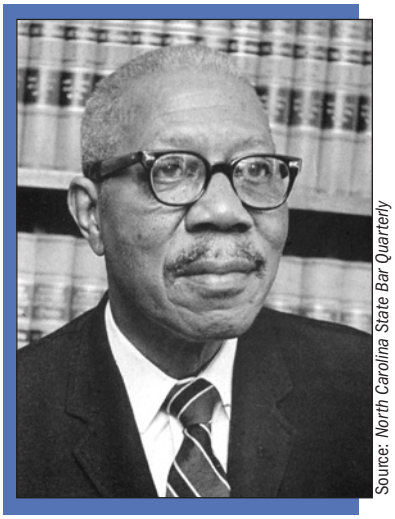
In congressional debates on the proposed Hill–Burton Act, National Association for the Ad-

vancement of Colored People (NAACP) Chairman Dr Louis T. Wright and other Northerners, particularly Senators William Langer (Republican, North Dakota) and Harold Burton (Republican, Ohio), called for nondiscrimination in the use of federal funds, or no money to hospitals that practiced segregation. Southerners, such as Senator Lister Hill (Democrat, Alabama), argued for states' rights or the right of state legislatures and local hospital authorities to set policy. A compromise was struck with inclusion of legislative language that allowed for "equitable distribution of hospital beds for each population group," or "separate but equal" as applied to hospital construction.[2] It would be the "separate but equal" clause of the Hill–Burton Act that would come under legal attack on the grounds that it violated the 5th and 14th Amendments of the US Constitution.

Over the next 10 years, with steady growth of funding for hospital construction made possible by Congress, the medical and hospital leadership gradually reversed the country's shortage of general hospital beds, but not its practices of hospital discrimination. Dr Paul Cornely, chair of the Department of Preventive Medicine and Community Health at Howard University, published in 1956 his survey of 60 National Urban League chapters—45 in the North and 15 in the South—designed to determine the extent of segregation in hospitals. He found that in the North, hospital integration was common, with 83% of hospitals reporting they provided some degree of integrated services. In the South, however, only 6% of hospitals offered Blacks services without restrictions; 31% did not admit Blacks under any conditions, even emergency; 47% had segregated wards for Whites and Blacks; and 16% had modified patterns of segregation that changed with the ratio of Whites and Blacks admitted at any one time.[3]

Throughout the North and South there were 3 architectural patterns of hospitals where Blacks found admission. One was the "all-Black" hospital built solely for the care of minority persons living in a community. The "mixed-race" hospital segregated Black patients onto a separate floor such as a basement or attic ward, a wing, or a building connected to the main hospital often via an exposed corridor. The fully integrated hospital, while rare even in the North, admitted Blacks to any available hospital bed, including beds in semiprivate and private rooms. If Blacks were admitted to a ward located on one end of a long corridor and Whites to a ward on the other end, one could not assume that these patient areas

Unlike schools, the Department of Health, Education and Welfare refused hospitals permission to submit "Go Slow" plans and demanded immediate integration prior to Medicare certification in 1966. Strong opposition to these changes surfaced within the Senate. The Fourth Circuit Court in *Cypress v Newport News Hospital Association* (1967) reaffirmed the federal government's use of the Medicare racial integration guidelines to reverse decades of overt hospital discrimination.



Source: *North Carolina State Bar Quarterly*

Conrad Odell Pearson, JD. Conrad Pearson, a graduate of Howard University Law School, served as the NAACP Legal Defense and Education Fund, Inc., general counsel for the state of North Carolina, and as such was involved in nearly every civil rights case submitted into the state's federal court system for over thirty years.

"Working from his office on Chapel Hill Street in Durham, Pearson began his legal career by attacking public institutions in North Carolina that operated on a conventional system of discrimination against Blacks."

were mirror images. Instead, new beds, air conditioning, and fresh paint added comfort to the quarters where Whites recuperated. In White sections, nurse staffing also was better and visiting hours for family members longer. While White physicians could care for patients in any bed—ward or private, Black or White—African American physicians, if granted admitting privileges, were restricted to the Black wards.

Born in Greensboro and raised in Durham, NC, Conrad Odell Pearson emerged as an important figure in the legal attack against hospital discrimination. After attending public schools in Durham, Pearson received his undergraduate degree from Wilberforce University in Ohio. He obtained his legal education at Howard University, passing the North Carolina State Bar Examination before completing his final year at Howard, and then graduated in 1932 in the same class with Thurgood Marshall. Like many others, Pearson came under the influence of the young vice dean (later dean) of the law school, Charles Hamilton Houston, who shaped Howard University Law School into a powerful training ground for activist lawyers grounded in the use of constitutional theory to overturn decades of Jim Crow laws. Conrad Pearson would emerge as one of his most productive protégés.

Working from his office on Chapel Hill Street in Durham, Pearson began his legal career by attacking public institutions in North Carolina that operated on a conventional system of discrimination against Blacks. The year following his graduation from Howard, Pearson began preparing *Hocutt v University of North Carolina*, the first suit seeking admission of a Black student to a southern state university. That same year, he successfully fought the systematic exclusion of Blacks from North Carolina juries in *State v Tucker*. Soon after *Tucker*, Pearson established a closer association with his former law school classmate, Thurgood Marshall, and the NAACP.[4]

For tax purposes, in 1939, the legal team working at the NAACP split off, forming a separate corporation and renaming themselves the NAACP Legal Defense and Education Fund, Inc. Although still housed in adjacent quarters in New York City, the Legal Defense Fund grew into an independent organization known for its legal advocacy against discrimination and injustice.[5] Conrad Pearson became the first NAACP Legal Defense Fund lawyer for the state of North Carolina, serving as a direct link between the state and the New York office. As such, he was involved in nearly every civil rights case filed in the federal court system in North Carolina from the mid-1930s through the late-1960s.[6] Although Pearson is remembered as a pioneer defender of civil rights, his defenses often took the nature of a series of offensives on institutional segregation.

CONSTRUCTING THE IDEAL "TEST CASE" IN HOSPITAL DISCRIMINATION

In May 1956, attorney Conrad Pearson filed on behalf of 3 physicians and 2 patients a class action suit, *Hubert A. Eaton et al. v Board of Managers of James Walker Memorial Hospital et al.* The suit charged James Walker Memorial Hospital with discrimination for denying Black physicians staff privileges because of their race, thus rendering them unable to care for their patients in this hospital.[7] District Court Judge Donald L. Gilliam held the first hearing 23 months later. Pearson argued state action in the affairs of the hospital because it paid no taxes, and because James Walker originally gave it to the city as a public facility. One month later, Judge Gilliam dismissed the case, believing there was insufficient evidence that this private hospital was fulfilling a state function.[8] It had never used Hill–Burton funds.

The NAACP Legal Defense Fund lawyers appealed the case before the US Court of Appeals Fourth Circuit using much the same argument. The Fourth Circuit Court affirmed the District Court decision on November 29, 1958.[9] Taking the next step, the Legal Defense Fund team petitioned the Supreme Court for writ of certiorari, or a request that the highest court accept the case for argument. While the Supreme Court denied writ, 3 justices, including Chief Justice Earl Warren, wrote in a dissent that certiorari should be granted. The NAACP lawyers realized just how unusual this was and set out to find their ideal "test case" for argument before the Circuit Court and potentially before the Supreme Court justices.[10] They did not wait long or look far.

George Simkins, DDS, a dentist in Greensboro, NC, was a leader in the Black community and well-known to the NAACP. He grew up in Greensboro, where he attended public schools before matriculating into Herzl Junior College in Chicago and then Talladega College, from which he graduated. He earned his dentistry degree from Meharry School of Dentistry in 1948 and completed a rotating

internship at Jersey City (NJ) Medical Center. Upon returning to Greensboro, he opened a private dentistry practice and joined the Guilford County Health Department, becoming the first African American so employed there.

Simkins was not only a well-known and respected dentist but also a nationally ranked badminton player. He had spearheaded efforts to racially integrate the public golf course and schools in Greensboro and served as president of the local NAACP chapter.[11] Frustrated with the crowded conditions and less modern facilities and equipment at L. Richardson Memorial Hospital, the "all-Black" hospital, Simkins called the NAACP Legal Defense Fund, inquiring whether anyone would help break down the discriminatory admitting privileges that existed at Moses H. Cone Memorial Hospital and Wesley Long Hospital.

The legal argument that would be used in the *Simkins* case did not rest on the inequality of facilities at L. Richardson Memorial Hospital compared with those at Moses H. Cone and Wesley Long Hospitals. From 1946 to 1963, only 70 of 7000 Hill-Burton construction projects were built as "separate but equal" facilities, or as either "all-White" or "all-Black" hospitals or renovation projects.[12] While all other recipients of Hill-Burton funding had executed an assurance of nondiscrimination, most denied Black physicians and dentists admitting privileges and segregated Black and White patients into separate wards.[13]

The critical difference between James Walker Memorial Hospital and Cone and Wesley Long Hospitals was the use of Hill–Burton funds by the latter 2 institutions. It was not so much the amount of funds they had used in the past, but that these federal dollars had been distributed on the basis of statewide surveys of population needs for hospital beds approved by the surgeon general of the US Public Health Service under the authority of the Hill–Burton program. Between 1946 and 1963, 350 Hill–Burton projects were authorized for funding in North Carolina alone, with a state allocation of $180.9 million and a federal contribution of $77.85 million.[14] This, the NAACP Legal Defense Fund lawyers argued, was state action in the operation of these private hospitals.

As the NAACP Legal Defense Fund state attorney, Conrad Pearson filed the suit on February 12, 1962, in honor of Abraham Lincoln's birthday.[15] Despite the dismissal of the suit at the District Court level on December 5, 1962, the New York–based Legal Defense Fund team appealed to the Fourth Circuit Court and argued their case before Chief Justice Simon E. Sobeloff and Judges Herbert S. Boreman, Clement F. Haynsworth, Albert V. Bryan, and J. Spencer Bell.[16] Once the NAACP lawyers could effectively argue state action, or federal involvement, in the affairs of a private institution, they were in a position to seek on behalf of the plaintiffs protection against discrimination under the 5th and 14th Amendments of the US Constitution. Furthermore, with state action proposed and relief against discrimination requested, the federal government could choose whether or not to render an opinion in the case. In a historic move, Assistant Attorney General Burke Marshall submitted a lengthy brief that supported the position of the Black dentists, physicians, and patients. The federal government agreed that the use of federal funds in a discriminatory manner was unconstitutional and that these professionals and patients should be granted the privileges and services they sought.[17]

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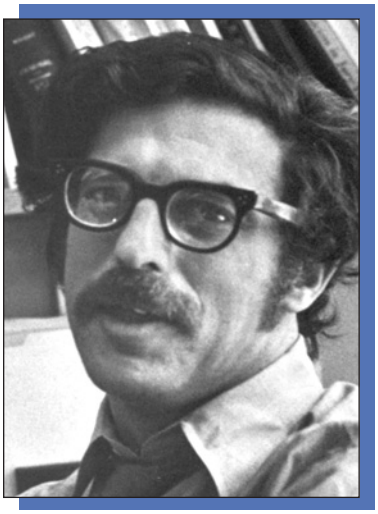
Chief Justice Sobeloff led the charge to overturn years of legal decisions that held in place an elaborate system of discriminatory hospital care. Initially, the majority of the Fourth Circuit Court judges did not support the position taken by the Office of the Attorney General, but over several months of deliberation and drafts of the decision, Sobeloff convinced Judge Bryan to change his vote. In the end, Judge Sobeloff secured Judges Bell and Bryan to vote with him, with Judges Haynsworth and Boreman dissenting.[18] The legal argument developed by Michael Meltsner, junior associate in the NAACP Legal Defense Fund, prevailed, as Sobeloff wrote in *G.S. Simkins, Jr et al. and the United States, Intervenor v Moses H. Cone Memorial Hospital et al.:*

> The massive use of public funds and extensive state–federal sharing in the common plan are all relevant factors. We deal here with the appropriation of millions of dollars of public



Permission of photographer, Rachael Cowan

Michael Meltsner, JD. Michael Meltsner as junior associate of the NAACP Legal Defense and Education Fund, Inc., developed the legal argument that proved successful before the US Court of Appeals Fourth Circuit in the landmark *Simkins v Moses H. Cone Memorial Hospital* (1963) case.

> monies pursuant to comprehensive governmental plans. . . . The issue is not equality or lack of equality in "separate but equal" but the degree of participation by the national and state government in the geographical proration of hospital facilities throughout the state.[19]

Heralded by many as a landmark case, *Simkins* became the *Brown v Board of Education* decision for hospitals. Between 1963 and 2001, there were over 260 references to *Simkins* in other legal decisions, more than any other case involving hospital racial discrimination.

And yet its reach was limited because the US Supreme Court denied writ of certiorari, and thus only those hospitals that were proposed or under construction in the jurisdiction of the Fourth Circuit Court (Maryland, Virginia, West Virginia, North Carolina, and South Carolina) were legally obligated to racially integrate their services. And the new Hill–Burton regulations did not apply to those hospitals that already had used federal funds. Nevertheless, in March 1964, the surgeon general published regulations that stated the following:

> 53.112 Before … approval, the State agency shall obtain assurances from the applicant that all portions and services of the entire facility for the construction of which, or in connection with which, aid under the Federal Act is sought, will be made available without discrimination on account of race, creed, or color; and that no professionally qualified person will be discriminated against … with respect to the privilege of professional practice in the facility.[20]

The role of *Simkins* in strengthening other court cases against hospital discrimination is unquestionable. In North Carolina, Dr Hubert Eaton had refiled his case against James Walker Memorial Hospital in July 1961. The New York–based Legal Defense Fund lawyers developed a new set of arguments that would extend the *Simkins* decision to all hospitals, including those that had not used Hill–Burton funds. They argued for state action in James Walker Memorial Hospital because of 4 conditions: (1) James Walker gave ownership of the hospital to the city and county under the condition that the hospital be maintained as a public facility; (2) the hospital both enjoyed a tax exempt status and received money from the county to expand the facility and to cover the costs of charity care; (3) the hospital had accepted money under the federal Defense Public Works Act with the stipulation that it adhere to nondiscrimination provisions; and (4) the hospital participated in the Hill–Burton statewide plan for hospital beds, although there was no direct use of funds.

As before, the District Court dismissed the case in April 1963, because "the factual situation here does not differ from the first *Eaton* case, and that there has been no intervening change in the law."[21] On appeal, Jack Greenberg of the Legal Defense Fund argued the case before Chief Justice Sobeloff and Judges Haynsworth, Boreman, Bryan, and Bell. In a unanimous decision on April 1, 1964, the Fourth Circuit Court reversed the lower court ruling. As Judge Herbert S. Boreman admitted, "Although I am still conscious of a lingering doubt as to the correctness of the holding in *Simkins*, I recognize the binding effect of that decision on members of this court. . . . Therefore, I unhesitantly concur with the opinion and join the judgment."[22] Legal opinion clearly had shifted.

Between July 2, 1960, and March 1, 1966, the NAACP Legal Defense Fund maintained about 35 cases against southern medical facilities. The fund worked hard with state attorneys to identify noncompliant hospitals that could be submitted as cases to the courts, and that could be used to pressure the Department of Health, Education and Welfare (HEW) to develop a rigorous compliance program, first under the Hill–Burton program and then under Title VI of the 1964 Civil Rights Act.[23] With the success of both *Simkins* and the second *Eaton* case, the Legal Defense Fund lawyers now could use either template when putting forward hospital discrimination cases in other circuit courts. Their goal was simple: to extend the reach of the law to hospitals throughout the country and to force into public discussion the failure of hospitals and other health care facilities to comply with federal regulations and state and national laws.

THE LIMITS OF VOLUNTARY COMPLIANCE

The filibuster that nearly defeated the 1964 Civil Rights Act was the longest in this nation's history.[24] Racism was not going to die easily, if ever. President Lyndon B. Johnson depended on Vice President Hubert Humphrey for passage of this legislation and would call on him again for help with the Medicare hospital certification program. On July 2, 1964, President Johnson signed into law the Civil Rights Act. HEW was the first federal agency to draft new regulations for Title VI that forbade the distribution of any federal funds to

institutions or state agencies that discriminated against minority populations. Approved by President Johnson in December 1964, these regulations became effective one month later and served as the model for other federal agencies.[25] With one clean move, Title VI gave 21 federal departments and agencies explicit mandate to withhold funds from grantees that discriminated, and by the fiscal year ending June 30, 1966, Title VI conditioned $18 billion in federal aid on nondiscrimination.[26] While the federal government had authority to withhold funds from noncompliant institutions and agencies, voluntary compliance with racial integration was the goal.

Despite many efforts, beginning in the early 1950s, to secure through voluntary action full membership in the North Carolina Medical Society and the North Carolina Dental Society, Black physicians and dentists still had no success.[27] Consequently, they were denied opportunities to serve on state licensing boards of examination and the North Carolina Medical Care Commission, which turned to the 2 all-White state professional societies for nominees. Black professionals also were denied hospital privileges that depended on membership in the local chapters of these state branches of the American Medical Association and American Dental Association. Reginald Hawkins, DDS, a Black dentist, refused to wait any longer and in 1963, as an individual, filed a class action suit against the North Carolina Dental Society for discrimination in membership. Predictably, the District Court dismissed the case on June 19, 1964, and the US Court of Appeals Fourth Circuit ruled in favor of Dr Hawkins on January 20, 1966. Again, the opinion written by Judge Simon Sobeloff summarized the discrimination that Black professionals faced at every turn:

> Dr Hawkins' application was not even considered, however, for he could not obtain the endorsements of two of the white members of the Society. Under the circumstances when the Society's membership was racially exclusive and the recommendation of no Negro acceptable, rigid enforcement of endorsements by members of the Society is itself a discrimination because of race.[28]

Dr W. Montague Cobb, president of the National Medical Association in 1964, praised the leadership of Dr Hubert Eaton, Dr George Simkins, Dr Reginald Hawkins, Dr Roy Bell (who filed a suit similar to the one filed by Dr Reginald Hawkins), and Jack Greenberg (chief legal counsel of the NAACP Legal Defense and Education Fund) in establishing legal precedent for the racial integration of hospitals and professional societies. In reality, however, the racial integration of America's hospitals had just begun.

John Gardner, appointed secretary of HEW in December 1965, once described the set of challenges he faced in racially integrating this country's private and public institutions as "a series of great opportunities disguised as insoluble problems." In July of that year, President Johnson had signed into law the Medicare Act that would become effective one year later. Secretary Gardner would need to guarantee America's elderly citizens access to thousands of hospitals that now had less than 6 months to racially integrate to receive federal funds under this national program. The task was enormous, but justification for withholding federal funds to noncompliant institutions was established legally through *Simkins* and the second *Eaton* case and was reinforced further by federal regulations under Title VI of the 1964 Civil Rights Act.[29]

By April 1966, the leadership of HEW and the Social Security Administration knew they faced an impending disaster. Survey data revealed that only 42% of all hospital beds in the country were in hospitals that complied with Title VI and were thus available for Medicare recipients.[30] Medicare was the largest and perhaps most important program of President Johnson's Great Society. He had flown to Missouri to sign the legislation in the company of former President Harry Truman, and yet hospitals throughout the South threatened to keep their doors closed to

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President W. Montague Cobb, MD, PhD, at the 1964 annual meeting of the National Medical Association awarding certificates to the physicians and dentists and chief counsel of the NAACP Legal Defense and Education Fund Inc for their courage in filing suits to reverse discriminatory policies and practices against black professionals and patients.

Blacks, which would make them ineligible to participate in Medicare. In fact, fewer than 10% of hospitals in Louisiana, Mississippi, Virginia, and South Carolina; between 11% and 15% of hospitals in Georgia, Alabama, and Florida; and just over 20% of hospitals in North Carolina were compliant with new federal hospital integration guidelines. In response, HEW and the Social Security Administration launched an assault on hospital discrimination. Over a period of several months, 3000 of 7000 hospitals underwent site visits by federal investigators to pressure them to comply with hospital racial integration guidelines[31](Table 1).

Their full-scale campaign was successful: on the eve of the start of Medicare, 14 states and 3 territories had 100% compliance. Of the southern states, 6 had more than 85% of their beds available for Medicare recipients and thus for all Americans, Black or White.[32] The job of hospital racial integration, however, was not finished. On the other end of the spectrum, Virginia reported that only 47% of its hospital beds were located in hospitals compliant with Medicare guidelines. While the Medicare hospital certification program eliminated overt discrimination in many hospitals throughout the country, racist policies and practices still existed in many others.

In September 1966, Senator John C. Stennis (Democrat, Mississippi), chairman of the Appropriations Committee, used his position to attach an amendment to the appropriations bill that would allow physicians and hospital administrators to continue to segregate patients. The argument put forth was that the medical condition of some patients could be adversely affected if they were placed in the same room with a patient of the opposite race. In these unique cases, the judgment of the physician could be called upon to determine the need for segregated quarters for these patients. More important, Stennis argued that hospitals not be held accountable for these "segregated" patients in calculations performed by HEW on hospital integration compliance during follow-up site visits, and that these data would not be used when pending approval of hospitals for Medicare certification was determined.[33]

The debate on the Senate floor was predictable. Northern senators, including John O. Pastore (Democrat, Rhode Island), Edward M. Kennedy (Democrat, Massachusetts), Joseph S. Clark (Democrat, Pennsylvania), and Jacob K. Javits (Republican, New York) argued several lines of attack. First, the proposed amendment more appropriately fell under the jurisdiction of the Labor Committee, the Education and Health Subcommittee, or even the Committee on the Judiciary, and thus should not be considered as a rider to the appropriations bill. Second, amendment 207, as written, undermined the Medicare hospital certification guidelines that had been developed and approved with input from several federal agencies, bureaus, and departments. Third, the current language of amendment 207 contradicted Title VI of the Civil Rights Act that Congress had passed and consequently could reverse gains in racial integration thus far achieved. Lastly, it potentially created a loophole large enough "to drive a Mack truck" through.

Senators John Stennis and Lister Hill countered by defending the proposed changes in implementation of the Medicare program. In fact, since Mississippi and Alabama stood as flagrant outliers in Title VI compliance, these 2 senators were doing their job by articulating well the positions of their White constituencies that voted them into office. With the majority of Democrats off the Senate floor in a confer-

ence committee when the amendment came up for vote, it passed.[34]

The House of Representatives, when presented with amendment 207, soundly defeated it. In conference committee, however, Senator Stennis demanded that Secretary Gardner put in writing his willingness to abide by the proposed changes in the implementation of Medicare before he would allow an appropriations bill to emerge free of the amendment. Gardner consented and sent Stennis 3 letters in October that both reaffirmed the Medicare racial integration guidelines and offered to allow physicians to segregate patients for medical reasons without compromising a hospital's Medicare certification. Back on the Senate floor on October 21, Senator Stennis summarized these HEW concessions and asked that copies of Secretary Gardner's letters be published in the Congressional Record.[35]

The legality of the Medicare hospital certification program would be tested in the courts; much to the surprise of many, it was not only upheld but strengthened. Fortuitously, the issue of hospital integration returned to the jurisdiction of the knowledgeable US Court of Appeals Fourth Circuit that had ruled in favor of the minority plaintiffs in both the *Simkins v Moses H Cone Memorial Hospital* and *Eaton v James Walker Memorial Hospital* cases. The second landmark case involved a Black board-certified pediatrician, Dr George Cypress, whose request for clinical privileges at Riverside Hospital in Newport News, Va, was denied in 1961 and again in 1962. A colleague of his, Dr C. Waldo Scott, a Black board-certified general surgeon, was denied privileges in 1963. More revealing, Dr Cypress was the only Black pediatrician in the community and the only pediatrician denied clinical privileges at Riverside Hospital. Of 18 surgeons in Newport News, all of them except Dr Scott, the only Black surgeon, held clinical privileges at this modern and well-equipped facility.[36]

In a class action suit, Dr Cypress along with 2 of his patients, both stricken with sickle cell disease, sued Newport News Hospital Association for the denial of staff privileges and discrimination in patient room assignments. The District Court dismissed the case on March 14, 1966, claiming "the difficulty . . . is that we do not know what factors were considered in rejecting their applications. . . . If race is the obstacle which brought about their rejection, they should be admitted. With a secret written ballot and no opportunity for a hearing, it is most difficult to determine."[37] The District Court hedged its conclusion with regard to the failure of Riverside Hospital to assign Black and White patients to the same room, arguing that this was a "complex matter which involves the delicate situation of the patient's feelings as related to his general health."[38] In the spring of 1966, however, Riverside Hospital signed an Assurance of Compliance (Form 441) with the federal government and became certified to participate in Medicare.

The New York–based NAACP Legal Defense Fund lawyers appealed the case to the Fourth Circuit Court, which reversed the District Court decision on March 9, 1967. While Clement F. Haynsworth now served as chief justice, Judge Simon Sobeloff assumed responsibility for writing the court's opinion, and in preparing for it did a thorough job of researching his subject. He knew of HEW's success in implementing Medicare and its strong position taken on the racial integration of patient rooms, and of Stennis's effort to undermine further progress. Consequently, he worked hard to create a unanimous decision because he believed any dissent would keep open this loophole.[39]

The *Cypress* case involved both assignment of patients to rooms regardless of race, class, or national origin and the granting of medical staff privileges to qualified minority physicians. In proving the existence of discrimination against these board-certified physicians, the NAACP Legal Defense Fund lawyers obtained the expert testimony of leaders in the fields of pediatrics and surgery as well as the judgments of supervisors. Dr Allan Butler, professor emeritus at Har-

Table 1: Medicare Title VI Hospital Racial Integration Guidelines

1. That hospitals provide inpatient and outpatient care without regard to race, color, or national origin;
2. That all patients be assigned to rooms, wards, floors, sections and buildings without regard to race, color, or national origin;
3. That employees, medical staff, and volunteers be assigned without regard to race, color, or national origin;
4. That the granting of permanent or temporary staff privileges be carried out in a nondiscriminatory manner;
5. That nondiscriminatory practices prevail in all aspects of training programs and require recruiting and selection of trainees at both predominantly White and Black schools;
6. That administrative services, medical and dental care for in-patients and out-patients, and other services be provided without regard to race, color, or national origin;
7. That employees and medical staff be notified in writing of the hospital's compliance with the Civil Rights Act;
8. That hospitals which end discriminatory practices notify those persons previously excluded from services; and,
9. That hospitals with dual facilities to maintain segregation change the purpose or close one building to insure biracial usage.

vard Medical School and former chief of children's services at Massachusetts General Hospital, was so impressed with Dr Cypress's clinical abilities that he testified he would recommend him to the staff of Massachusetts General Hospital and for a full-time salaried position on the pediatric service of the Metropolitan Hospital of Detroit. Dr Colvin W. Salley, former commanding officer at the army hospital where Dr Cypress had been stationed, testified that in 29 years of practicing medicine he had never been associated with a better pediatrician.

After observing Dr Waldo Scott in the operating room and reviewing his charts, Dr Samuel Standard, professor of clinical surgery at New York University and Bellevue Medical Center, stated that Scott's surgical technique was nearly flawless. When asked if he would recommend Dr Scott to the surgical staff of one of the hospitals where he held responsibility, Dr Standard without hesitation responded, "I would be very happy to have a man of his caliber as an example for a group of residents not only about how to do surgery, which I have no doubt about at all, but also how to live with one's fellow man and his responsibility to surgical care and the grace and the ease with which he carries himself."[40]

In a unanimous decision, the Court of Appeals Fourth Circuit found Drs Cypress and Scott to have exceptional competence, even beyond that of members of the medical staff of Riverside Hospital, and forced the hospital to grant privileges to these qualified minority physicians. Furthermore, the Fourth Circuit Court judges believed the practice of closed balloting was discriminatory and against federal Medicare regulations. With a partial dissent by Judge Albert Bryan of Alexandria, Va, the court ruled that patients could not be segregated into separate rooms under the guise of a serious medical condition when it was apparent that this scheme could be used to perpetuate discriminatory hospital policies and practices. Under the pen of Judge Sobeloff and now under the law, hospitals that participated in Medicare would be held to an even higher standard of compliance with racial integration guidelines. He believed that the Stennis amendment and HEW's concessions were unconstitutional, and therefore he did not even address them in his draft of the court's opinion.[41] The law would allow for no more loopholes and evasions of responsibility. As Sobeloff wrote:

> The District Judge asked whether it was "discrimination per se merely because a hospital has deemed fit to place White patients in one ward, Negro patients in another ward?" We answer that it is. . . . Our holding is simply that race cannot be a factor in the admission, assignment, classification, or treatment of patients in an institution like this which is state-supported and receives federal funds . . . since the law forbids the treatment of individuals differently or separately because of their race, color, or national origin.[42]

Sobeloff recognized that the act of filing a statement of assurance did not guarantee compliance and wondered when the HEW carrot of federal funds through Medicare would have its hoped-for effect. In the meantime, he concluded, "it would be fatuous for courts to abstain where the right to relief has been abundantly proved."[43]

CONCLUSION

Discrimination existed in overt patterns in hospitals throughout the North and South until the mid-1960s. These discriminatory policies and practices barred Black professionals from the medical staffs of hospitals and patients from beds and services, and they denied Black students access to nurse and residency training programs. While actions taken by Congress and the federal government helped eliminate overt racial discrimination in hospital staff privileging, patient admissions, and education programs, without strong court rulings these advances would have fallen short of their intended outcomes.

The significance of the *Simkins v Moses H. Cone Memorial Hospital* case is demonstrated by the US Court of Appeals Fourth Circuit's referring to this decision in nearly every hospital racial discrimination case that followed for the next 2 decades. It both laid the foundation for hospital integration under the Hill–Burton program and provided legal justification for Title VI of the 1964 Civil Rights Act and the Medicare hospital certification program. The Medicare hospital racial integration guidelines that now applied to every hospital that participated in this federal program were challenged in *Cypress v Newport News Hospital Association*, in part because their impact was so pervasive in most southern institutions. Again, the Fourth Circuit Court ruled not only that all qualified physicians should be granted staff privileges, but all patients should be assigned a bed on the basis of their medical and surgical needs, not the color of their skin. ■

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